

(aside from active coal) was assessed at the same value an acre, despite well known and important differences in value, the result would have been an undervaluation of similar coal belonging to other owners, which would have brought the case of the petitioners within the principle of the decisions cited. In such case, if the petitioners' property had been valued at one hundred per cent. of its actual value, the like property of the other owners, having a higher actual value, would in effect have been valued at less than one hundred per cent. The discrimination is essentially the same, and is equally repugnant to constitutional right, when both assessments are made on the basis of fifty per cent. of assigned values and differences in actual values are deliberately and systematically disregarded. The undervalued property is in effect valued at less than fifty per cent. of its actual value; for example, coal of the same description worth twice as much as that of the Cumberland Coal Company was really valued at twenty-five per cent. of its actual value.

The petitioners are entitled to a readjustment of the assessments of their coal so as to put these assessments upon a basis of equality, with due regard to differences in actual value, with other assessments of the coal of the same class within the tax district.

The decrees are reversed and the causes are remanded for further proceedings not inconsistent with this opinion.

Reversed.

SANTOVINCENZO, CONSUL OF THE KINGDOM
OF ITALY AT NEW YORK, *v.* EGAN, PUBLIC
ADMINISTRATOR, ET AL.

APPEAL FROM THE SURROGATES' COURT OF THE COUNTY OF
NEW YORK, STATE OF NEW YORK.

No. 31. Argued October 22, 1931.—Decided November 23, 1931.

1.—Case from a state court, involving the construction and application of treaties, *held* reviewable by certiorari. P. 35.

2. Article XVII of the Consular Convention of 1878 with Italy provides that "The respective Consuls General . . . shall enjoy in both countries all the rights, prerogatives, immunities and privileges which are or may hereafter be granted to the officers of the same grade, of the most favoured nation." Article VI of the Treaty of 1856 with Persia (terminated in 1928) declares: "In case of a citizen or subject of either of the contracting parties dying within the territories of the other, his effects shall be delivered up integrally to the family or partners in business of the deceased; and in case he has no relations or partners, his effects in either country shall be delivered up to the consul or agent of the nation of which the deceased was a subject or citizen, so that he may dispose of them in accordance with the laws of his country." An Italian subject, domiciled in New York, died there, intestate and without heirs or next of kin, before the termination of the treaty; and, in the administration of his estate by the New York courts, the question arose whether his net assets, after satisfying creditors and expense of administration, should escheat to the State or be paid to the Italian Consul General for disposition to the Kingdom of Italy. *Held:*

(1) The provision in the convention, assuming it contemplates reciprocity of rights and is so recognized by Italy, confers upon the Consul General the rights defined by the treaty provision. P. 36.

(2) The termination of the treaty, having occurred after the death, does not affect the case. *Id.*

(3) The net assets must be delivered to the Consul General, since Art. VI contains no qualification recognizing precedence of local laws, and, when considered with other portions of the treaty, and the general purpose of the treaty to promote commercial intercourse, it clearly includes subjects of either country who are domiciled in the other. Pp. 36-39.

3. As treaties are contracts between independent nations, their words are to be taken in their ordinary meaning as understood in the public law of nations. P. 40.

4. The United States, under the treaty-making power, may determine the disposition of property of aliens, and any conflicting law of a State must yield. *Id.*

135 N. Y. Misc. 733; 240 N. Y. Supp. 691, reversed.

APPEAL, given the effect of a writ of certiorari, to review a decree of the Surrogates' Court of New York County settling an estate, which was affirmed by the Appellate Division, 229 App. Div. 862; 243 N. Y. S. 814. The

record went back to the Surrogates' Court by remittitur, leave to appeal to the Court of Appeals having been denied by that court and by the Appellate Division.

Mr. Carroll G. Walter, with whom *Mr. Ralph Atkins* was on the brief, for appellant.

The question in this case is to be carefully distinguished from the much-discussed question of the right of foreign consuls to administer the estates of their nationals (*Rocca v. Thompson*, 223 U. S. 317; *Matter of D'Adamo*, 212 N. Y. 214). No right of administration is here asserted.

The word "effects" unquestionably includes personal property of all kinds. 19 C. J. 1017; *Bouvier's Law Dictionary*; *Burrill's Law Dictionary*; *Todok v. Union State Bank*, 281 U. S. 449, 453, 454.

The test laid down in the treaty is nationality and not domicile.

The treaty coincides with and furthers the long-standing policy of the United States to have its consuls take possession of the estates of its citizens, who die in foreign countries leaving no legal claimant there, and remit the same to this country. Rev. Stats. § 1709; U. S. Code, Title 22, § 75; Act of April 14, 1792, 1 Stat. 255; *Matter of D'Adamo*, 212 N. Y. 214; *Rocca v. Thompson*, 223 U. S. 317, 332.

If the matter were in doubt, then, too, the construction contended for by the appellant should be adopted. *Asakura v. Seattle*, 265 U. S. 332, 342; *Nielsen v. Johnson*, 279 U. S. 47, 52; *Jordan v. Tashiro*, 278 U. S. 123, 127; *Geofroy v. Riggs*, 133 U. S. 258, 271, 272.

The statutes of New York, in accordance with which the courts below directed payment of the estate, are inconsistent with the treaties and therefore invalid. The courts below, in substance and effect, have denied the validity of the treaties. See *Bryant v. Zimmerman*, 278 U. S. 63, 67.

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Argument for Appellee.

When two constructions of a treaty are possible, the one which enlarges, rather than restricts, the rights claimed under it is to be preferred.

Decedent's estate is a derelict estate. It escheats either to New York or to Italy. The only question is: To which sovereign does it escheat?

Mr. Robert P. Beyer, Deputy Assistant Attorney General of New York, with whom *Mr. John J. Bennett, Jr.*, Attorney General, was on the brief, for appellee.

The established rule that succession to personalty follows the law of the domicile is not affected by the Persian treaty.

Whether the treaty-making power may constitutionally supplant, or even qualify, the state laws regulating the administration of estates, was left open to question in *Matter of D'Adamo*, 212 N. Y. 214, although the court cites, and without disapproval, the opinions of various secretaries of state disclaiming the existence of such a power. Nor is that question here involved. The construction of the treaty here sought is, as that opinion points out, so subversive of our settled law, that it should be rejected. It was designed to apply only to derelict estates.

To hold that the treaty applies solely to Persian nationals temporarily sojourning here, not only reconciles the convention to well settled law, but gives it a rational, if not the only credible interpretation.

In this view of the understanding of the treaty, it is not deemed necessary to comment on appellant's insistence that he is entitled to all its benefits, perforce of the "most favored nation" clause of the Italian treaty. It must be presumed that the subject was under consideration in 1894, when our Government declined to authorize Italian consuls to settle the estates of their deceased

nationals in this country. See *Rocca v. Thompson*, 223 U. S. 317, affirming 157 Cal. 552.

The State has declared a settled policy that all personal property of persons domiciled within its borders is to remain in the State unless directed to be paid to those next of kin who are proved to be actually entitled thereto. No presumption destructive of state sovereignty should be indulged.

MR. CHIEF JUSTICE HUGHES delivered the opinion of the Court.

Antonio Comincio, a native of Italy, died intestate in New York City sometime prior to March 10, 1925, when letters of administration were issued to the respondent as Public Administrator by the Surrogates' Court of New York County. Upon the judicial settlement of the administrator's account, the appellant, the Consul General of Italy at New York, presented the claim that the decedent at the time of his death was a subject of the King of Italy and had left no heirs or next of kin, and that, under Article XVII of the Consular Convention of 1878 between the United States and Italy, the petitioner was entitled to receive the net assets of the estate for distribution to the Kingdom of Italy. The Attorney General of New York contested the claim. The Surrogates' Court, finding that the domicile of the decedent was in New York City, decreed that the balance of the estate, amounting to \$914.64, after payment of debts and the sums allowed as commissions and as expenses of administration, be paid into the treasury of New York City for the use and benefit of the unknown kin of the decedent. The decree was affirmed by the Appellate Division of the Supreme Court of the State, First Department, and both the Appellate Division and the Court of Appeals of the State denied leave to appeal to the latter court. The case may

be regarded as properly here on certiorari. Jud. Code, § 237 (c); U. S. C., Tit. 28, § 344 (c).

There is no controversy as to the facts. The decedent was never naturalized, and at the time of his death was an Italian subject. He had lived in New York for many years, and the finding that the decedent was domiciled there is not open to question. Nor were any heirs or next of kin discovered. The testimony introduced on behalf of the Italian Consul General, which was undisputed, stated that the decedent had no relatives, and the decree of the Surrogates' Court recited that next of kin were unknown. The decree was made pursuant to c. 230 of the Laws of New York of 1898. The Surrogate said in his opinion: "Pursuant to our statutes this amount would be directed in the decree to be paid into the city treasury of the City of New York to await ascertainment of the next of kin. Ultimately the amount would find its way into the treasury of the State of New York."

The provision of the Consular Convention between the United States and Italy, under which the claim of the Italian Consul General was made, provides (20 Stat. 725, 732):

"Article XVII. The respective Consuls General, Consuls, Vice-Consuls and Consular Agents, as likewise the Consular Chancellors, Secretaries, Clerks or Attachés, shall enjoy in both countries, all the rights, prerogatives, immunities and privileges which are or may hereafter be granted to the officers of the same grade, of the most favoured nation."

Pursuant to this agreement, the Italian Consul General sought the application of Article VI of the Treaty between the United States and Persia of 1856, as follows (11 Stat. 709, 710):

"Article VI. In case of a citizen or subject of either of the contracting parties dying within the territories of the other, his effects shall be delivered up integrally to

the family or partners in business of the deceased; and in case he has no relations or partners, his effects in either country shall be delivered up to the consul or agent of the nation of which the deceased was a subject or citizen, so that he may dispose of them in accordance with the laws of his country."

This Treaty with Persia was terminated on May 10, 1928, but, as this was subsequent to the death of the Italian national whose estate is in question, the termination does not affect the present case.

It may be assumed that Article XVII of the Consular Convention with Italy contemplates reciprocity with respect to the rights and privileges sought, and there is no suggestion that Italy has not recognized the right of consuls of the United States to take the effects of the citizens of the United States dying in Italy in circumstances similar to those in which the present claim of the Italian Consul General is pressed. As, in this view, there appears to be no ground for denying the right of the Italian Consul General to demand the application of the last clause of Article VI of the Treaty with Persia, the only question is as to the interpretation of that provision.

We are not here concerned with questions of mere administration, nor is it necessary to determine that the loose phrasing of the provisions of Article VI precludes an appropriate local administration to protect the rights of creditors. Nor have we to deal with a case of testamentary disposition. In this instance there is no will, administration has been had, creditors have been paid, proper steps have been taken, without success, to discover kin of the decedent, and, assuming the absence of relatives, the question is one of escheat, that is, whether the net assets shall go to Italy or to the State of New York. The provision of Article VI of the Treaty with Persia does not contain the qualifying words "conformably with the laws of the country" (where the death occurred) as in

the case of the Treaty between the United States and the Argentine Confederation of 1853 (Art. IX, 10 Stat. 1001, 1009; *Rocca v. Thompson*, 223 U. S. 317, 326, 330, 332); or the phrase "so far as the laws of each country will permit," as in the Consular Convention between the United States and Sweden of 1910 (Art. XIV, 37 Stat. 1479, 1487, 1488; *Rocca v. Thompson*, *supra*; *Matter of D'Adamo*, 212 N. Y. 214, 222, 223; 106 N. E. 81). The omission from Article VI of the Treaty with Persia of a clause of this sort, so frequently found in treaties of this class, must be regarded as deliberate. In the circumstances shown, it is plain that effect must be given to the requirement that the property of the decedent "shall be delivered up to the consul or agent of the nation of which the deceased was a subject or citizen, so that he may dispose of them in accordance with the laws of his country," unless a different rule is to apply simply because the decedent was domiciled in the United States.

The language of the provision suggests no such distinction and, if it is to be maintained, it must be the result of construction based upon the supposed intention of the parties to establish an exception of which their words give no hint. In order to determine whether such a construction is admissible, regard should be had to the purpose of the Treaty and to the context of the provision in question. The Treaty belongs to a class of commercial treaties the chief purpose of which is to promote intercourse, which is facilitated by residence. Those citizens or subjects of one party who are permitted under the Treaty to reside in the territory of the other party are to enjoy, while they are such residents, certain stipulated rights and privileges. Whether there is domiciliary intent, or domicile is acquired in fact, is not made the test of the enjoyment of these rights and privileges. The words "citizens" and "subjects" are used in several articles of the Treaty with Persia and in no instance are

they qualified by a distinction between residence and domicile. Thus, in Article III we find the following provision (11 Stat. 709):

"Article III. The citizens and subjects of the two high contracting parties, travellers, merchants, manufacturers, and others, who may reside in the territory of either country, shall be respected and efficiently protected by the authorities of the country and their agents, and treated in all respects as the subjects and citizens of the most favored nation are treated."

It would be wholly inadmissible to conclude that it was the intention that citizens of the United States, making their residence in Persia under this Treaty, would be denied the benefit of Article III in case they acquired a domicile in Persia. The provision contemplated residence, nothing is said to indicate that domicile is excluded, and the clear import of the provision is that, so long as they retained their status as citizens of the United States, they would be entitled to the guaranty of Article III. The same would be true of Persians permitted to reside here under the Treaty.

Again, the provisions of Article V of the Treaty were of special importance, as they provided for extraterritorial jurisdiction of the United States in relation to the adjudication of disputes.¹ It would thwart the major

¹ "Article V. All suits and disputes arising in Persia between Persian subjects and citizens of the United States, shall be carried before the Persian tribunal to which such matters are usually referred at the place where a consul or agent of the United States may reside, and shall be discussed, and decided according to equity in the presence of an employé of the consul or agent of the United States.

"All suits and disputes which may arise in the empire of Persia between citizens of the United States, shall be referred entirely for trial and for adjudication to the consul or agent of the United States residing in the province wherein such suits and disputes may have

purpose of the Treaty to exclude from the important protection of these provisions citizens of the United States who might be domiciled in Persia. The test of the application of every paragraph of Article V, with respect both to citizens of the United States and to Persian subjects, clearly appears to be that of nationality, irrespective of the acquisition of a domicile as distinguished from residence.

We find no warrant for a more restricted interpretation of the words "a citizen or subject of either of the contracting parties" in Article VI than that which must be given to the similar description of persons throughout the other articles of the Treaty. The same intention which made nationality, without limitation with respect to domicile, the criterion in the other provisions, dominates this provision. The provision of Article VI is reciprocal. The property of a Persian subject dying within the United States, leaving no kin, is to be dealt with in the same manner as the property of a citizen of the United States dying in Persia in similar circumstances:

arisen, or in the province nearest to it, who shall decide them according to the laws of the United States.

"All suits and disputes occurring in Persia between the citizens of the United States and the subjects of other foreign powers, shall be tried and adjudicated by the intermediation of their respective consuls or agents.

"In the United States, Persian subjects, in all disputes arising between themselves, or between them and citizens of the United States or foreigners, shall be judged according to the rules adopted in the United States respecting the subjects of the most favored nation.

"Persian subjects residing in the United States, and citizens of the United States residing in Persia, shall, when charged with criminal offences, be tried and judged in Persia and the United States in the same manner as are the subjects and citizens of the most favored nation residing in either of the above-mentioned countries."

It is not necessary to invoke the familiar rule with respect to the liberal construction of treaties,² as the instant case merely calls for a reading of the provision as to "citizens" and "subjects" according to its terms. There is no applicable principle which permits us to narrow them. As treaties are contracts between independent nations, their words are to be taken in their ordinary meaning "as understood in the public law of nations." *Geofroy v. Riggs*, 133 U. S. 258, 271.

There can be no question as to the power of the Government of the United States to make the Treaty with Persia or the Consular Convention with Italy. The treaty-making power is broad enough to cover all subjects that properly pertain to our foreign relations, and agreement with respect to the rights and privileges of citizens of the United States in foreign countries, and of the nationals of such countries within the United States, and the disposition of the property of aliens dying within the territory of the respective parties, is within the scope of that power, and any conflicting law of the State must yield. *Hauenstein v. Lynham*, 100 U. S. 483, 489; *Geofroy v. Riggs*, *supra*, at p. 266; *Missouri v. Holland*, 252 U. S. 416, 434; *Sullivan v. Kidd*, 254 U. S. 433, 440; *Asakura v. Seattle*, 265 U. S. 332, 343; *Todok v. Union State Bank*, 281 U. S. 449, 453.

Our conclusion is that, by virtue of the most-favored-nation clause of Article XVII of the Consular Convention between the United States and Italy of 1878, the Italian Consul General was entitled in the instant case, being that of the death of an Italian national in this country prior to the termination of the Treaty between the United

² *Hauenstein v. Lynham*, 100 U. S. 483, 487; *Geofroy v. Riggs*, 133 U. S. 258, 271; *Tucker v. Alexandroff*, 183 U. S. 424, 437; *Asakura v. Seattle*, 265 U. S. 332, 342; *Jordan v. Tashiro*, 278 U. S. 123, 127; *Nielsen v. Johnson*, 279 U. S. 47, 52.

States and Persia of 1856, to the benefit of Article VI of that Treaty, and that the net assets of the decedent should be delivered to him accordingly.

The decree is reversed, and the cause is remanded for further proceedings not inconsistent with this opinion.

Reversed.

STATE TAX COMMISSION OF MISSISSIPPI ET AL.
v. INTERSTATE NATURAL GAS CO., INC.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

No. 40. Argued October 26, 1931.—Decided November 23, 1931.

The selling of gas wholesale to local, independent distributors from a supply passing into and through the State in interstate commerce, does not become a local affair and subject to a local privilege tax merely because the vendor, to deliver the quantities sold, uses a thermometer and a meter and reduces the pressure.

Affirmed.

APPEAL from a decree enjoining the Commission from enforcing a privilege tax.

Mr. Edward R. Holmes, Jr., argued the cause for appellants, appearing *pro hac vice* by leave of Court; and *Messrs. George T. Mitchell*, Attorney General of Mississippi, and *J. A. Lauderdale*, Assistant Attorney General, were on the brief.

The New York contracts are simply executory contracts of sale. The appellee cannot tell what gas it will sell to the distributor at Woodville, or what gas it will carry on through Mississippi into Louisiana. None of the gas is actually sold before it leaves the gas fields in Louisiana. It is true that the appellee is transporting gas with a view to selling it, but, before it relinquishes the title and control of any of it by delivery to the distributor,